Supreme Court, U.S.
FILED

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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1999

George E. Burdick and Mary Kate Burdick,
Petitioners

v.

Franklin County
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

pro se
George E. Burdick and Mary Kate Burdick
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48 pp

QUESTIONS PRESENTED

This action seeks to correct certain taxing procedures by Franklin County acting under color of state law which violate the Petitioners' constitutional and civil rights guaranteed under the federal Constitution and the Civil Rights Act. Voters of North Carolina were denied their right to make an informed and effective vote on the Amendment to the 1970 North Carolina State Constitution which eliminated the cap on property tax rate using a deceptive, flawed ballot taking away the authority to set the tax rate from voters and giving such authority to the counties. Franklin County has since raised the property tax rate to an unprecedented level. In addition, the foreclosure procedures employed by the County against the Petitioners' real property have been arbitrarily selective and discriminatory violating the Petitioners' right to due process.

1. Is a provision valid when the ballot fails to convey an intelligible scope or input of the matter being voted upon?
2. When not adequately informed on the ballot, are voters not denied the right guaranteed by the 15th Amendment to have all action necessary to make vote effective?
3. Can a state statute based upon a constitutional provision passed using a flawed and deceptive ballot be considered valid and binding?
4. Does the taking of property as a result of laws enacted under a flawed ballot not violate protection guaranteed by the 4th and 14th U. S. Amendments against unreasonable seizure and denial of due process?
5. May not voters seek redress in federal court when federal civil and constitutional rights have been violated by state and local governments acting under color of state law?

Rule 29.1 List

There are no related corporations or other parties.

SERVICE TO STATE

The Attorney General of the State of North Carolina has been served a copy of this document pursuant to 28 U.S.C. § 2403(b) in the event that it may apply.

As defined by 28 U.S.C. §451, the Petitioner does state pursuant to 28 U.S.C.§(2403(b),the Attorney General of the State of North Carolina has been advised by certified mail that this case has elements of the constitutionality of one of the Amendments to the North Carolina State Constitution and such may be drawn into question.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1999

George E. Burdick & Mary Kate Burdick,
Petitioners

v.

Franklin County
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

George E. Burdick and Mary Kate Burdick respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The United States Court of Appeals for the Fourth Circuit decided by unpublished per curiam opinion on 11/4/98 to deny the petition to consider this case. The court denied the petition for rehearing and for consideration of rehearing en banc on 12/28/98. The Respondent's motion for fees and costs was denied 12/28/98.

Previously, the United States District Court had issued an order to remand the cases back to the state court and awarded costs to Plaintiff. The Petitioners moved for a rehearing and moved to amend the motion for rehearing both of which were denied.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided by unpublished per curiam opinion not to accept the cases for consideration: 98-2246, 98-2247, 98-2248, 98-2249. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1254(1).

FEDERAL PROVISIONS INVOLVED

This case involves violations by a county government acting under color of state law of Petitioners' rights guaranteed under the United States Constitution: Amendment IV, Amendment XIV, Amendment XV and the United States Civil Rights Code: 42 U.S.C. §1971 and 42 U.S.C. §1983.

STATEMENT

Respondent, Franklin County, a North Carolina Body Politic, brought suit against the Petitioners in the state court for failure to pay ad valorem property taxes, 97 CVD 324. The Petitioners filed a Notice of Removal to federal District Court on the basis that the Franklin County tax collecting and foreclosure process under the color of state law had violated certain of their federal constitutional and civil rights.

The United States District Court for the Eastern District of North Carolina ordered the cases back to the state court, Cases No. 5:97-CV-481-BR(3), No. 5:97-CV-482-BR-(3); No. 5:97-CV-483-BR(3) and No. 5:97-CV-484-BR-(3), App. E. A timely appeal was made to the United States Appeals Court for the Fourth District but the petition for consideration was not accepted for consideration, App. F. The petition for

Rehearing and Rehearing En Banc was denied December 28, 1998, App. G. The decisions of the federal District Court and the Appeals Court for the Fourth Circuit failed to provide relief to the Petitioners against violations of their constitutional and civil rights caused by Franklin County's levy of real property tax under the color of law using a tax rate originating from the passage of an intentionally misleading and vaguely worded proposed Amendment to the North Carolina State Constitution; AND, the threatened loss of real property by foreclosure using arbitrary and discriminatory County policy and practices under color of state law which violate Petitioners' guarantee of due process.

The question of subject matter jurisdiction is the basis for the District Court denial and the reason for the Appeals Court order not to consider. The Petitioners contend that the violations have occurred under color of state law and are, therefore, under federal subject matter jurisdiction since both federal constitutional and civil rights have been denied by the County. (42 U.S.C. §1971; 42 U.S.C. §1983)

There are two main issues to consider in this case. First, there is the levy of taxes on real property in Franklin County, North Carolina, using a tax rate that has been derived from an improperly validated law. At present, property is taxed at a rate of 97¢ per 100 dollars of valuation. The Petitioners contend that the property should be taxed at the rate of 20¢ per 100 dollars of valuation based upon the law as written in the 1969 state constitution prior to the date of the 1970 election. (N.C. State Constitution 1969, 1973, 1977, App. D)

Petitioners allege that the Respondent has acted under color of state law by using authority derived from a ballot that was intentionally deceptive which deprived voters of the right and privilege to cast an effective ballot when such a right is guaranteed under the 15th Amendment, U.S. Constitution, and protected by 42 U.S.C. §1971(a).

To have an effective vote, the voter must be presented with a ballot that is specific in wording even though abbreviated that describes clearly what issues are to be voted upon. It is one thing to go to the polls and vote, yet another to vote using a clearly understandable ballot that is not misleading in content. To vote, but not be properly informed of the consequence of that vote, is to be deprived of an effective vote.

Since the wording of the 1970 ballot did not specifically mention the removal of the cap on the tax rate of twenty cents (20¢) per hundred dollars ($100.00) property tax valuation from the State Constitution and the wording was so abridged as to give no hint of eliminating the cap altogether, the Petitioners contend that the authority arising out of the 1970 proposed Amendment Four which Franklin County is using to set the tax rate for levy is not valid because Petitioners' federal constitutional and civil rights were denied when "...all action necessary to make vote effective," was not taken. U.S. by Clark v. Dem. Exec. Com. Barbour Co, Alabama; 42 U.S.C. §1971(a) The provisions in the state constitution effective prior to the 1970 election should dictate the rate at which real property is taxed in North Carolina until such time as the voters are again presented with the issue on a valid ballot, clear and concise in the wording, restoring to the Petitioners the right to

make a meaningful and effective vote. (N.C. State Constitution, 1969, App. D)

The second issue in this case is the foreclosure procedures used by Franklin County against the Burdick property which were employed with the specific intent of depriving Petitioners of property in an arbitrary, unreasonable, and discriminatory manner under the color of state law. On April 25, 1997, when the four complaints were filed, File No. 97CV324, the taxes on the property were three months past due. Not all real property owners owing delinquent taxes in Franklin County had suits filed to foreclosed when taxes on their real property were three months overdue. This is borne out in the county's public records of delinquent taxes, N.C.G.S. §105-369, App. I, and is prima facie evidence of not being treated equally under the law. This blatant abuse of taxing authority under the color of law pursuant to N.C.G.S. §105-374, App. I, is an act of discrimination used by the county which singled out Petitioners as a target for the foreclosure suits. The taking of property under the color of state law has violated the Petitioners' rights under the 4th Amendment to the U.S. Constitution guaranteeing against unlawful seizure and violates their right to due process under the 14th U.S. Amendment.

In North Carolina, authority for foreclosure on real property for taxes is derived from N.C.G.S. §105-374, App. I. Counties derive their power from the fact that the tax bill itself becomes a lien on the property even before the taxes are delinquent. The authority to foreclose is put in the hands of the tax collector to wielded with fairness and equality. The North Carolina State Constitution (1977) Article V Sec 2(1) states: "The power of taxation shall be

exercised in a just and equitable manner, for public purposes only...", App. D. Franklin County denied the Petitioners "just and equitable" treatment under the provisions of the state constitution in addition to violating their federal right to due process by discriminately accelerating the foreclosure action.

In a telephone survey, the Petitioner found that tax collectors in surrounding counties operating under the same statutes for authority, use foreclosure as a last resort. The earliest proceedings are initiated six months after taxes became due and notice given but, in most cases, not for a year or more after all other remedies have been exhausted.

Such hasty steps taken by Franklin County under color of state law to selectively begin foreclosure suits on an accelerated time frame can only be interpreted as use of discriminatory practices against the Petitioners denying them due process.

REASONS FOR GRANTING THE PETITION

I. The decision of the Court of Appeals for the Fourth Circuit failed to address the issue of the violations of Petitioners' Federal Constitution and Civil Rights by the Respondent, Franklin County, acting under the color of state law.

It is respectfully submitted that in affirming the Federal District Court's action, the United States Court of Appeals for the Fourth Circuit failed to protect the Petitioners' federal constitutional rights under Amendments IV, XIV, and XV and their civil rights under 42 U.S.C. §1971 and 42 U.S.C. §1983 from actions of Respondent acting under color of state law, App. F, App. G.

The United States District Court Eastern District of North Carolina remanded the cases under No. 4:97-CV-481-BR(3) back to the state court saying there was no subject matter jurisdiction and awarded legal fees and costs without granting a hearing or commenting on the merits of the case. Respondent had unreasonably accelerated foreclosure on the Burdicks' property in a discriminatory manner under color of state law. Petitioners allege there was a denial of due process by the District Court by not allowing the Petitioners to question the amount of the award to Respondent in the absence of a hearing, trial or other means, App. E.

It is respectfully submitted that in remanding the case back to the state court, the United District Court failed to properly recognize the importance of the substantial connection inquiry between the disenfranchisement of the Petitioners resulting from an improperly prepared ballot and the County's tax levy using an exorbitantly high tax rate under the pretense of law originating out of that very same improperly prepared ballot.

The question is thus: If the ballot is improper, is not the law originating from that ballot improper, as well?

Further, it is respectfully submitted that in remanding the case back to the state court, the United States District Court failed to properly recognize the importance of the direct connection between the discriminatory practices used by Franklin County in the process of bringing the foreclosure suits and the Petitioners' claim of lack of due process.

Franklin County under color of the state statute N.C.G.S. §103-174, used discriminatory practices to selectively chose the Petitioners for foreclosure, in violation of their right to equality under the law and to due process. The Petitioners believe that this matter, too, falls within the jurisdiction of the federal courts, 42 U.S.C. §1983.

II. This case presents an important question of whether a ratified amendment can be considered constitutional and valid and still satisfy requirements for becoming law when the ballot upon which such proposed law originated was purposefully vague and misleading, thereby violating the Petitioners' federal constitutional and civil rights by denying them the right to make an informed and effective vote.

The question is very pertinent to this case. The Respondent, Franklin County, levied taxes using a tax rate under color of state law that originated out of the 1970 state election which employed a purposely flawed ballot describing Amendment Four. The Petitioners contend Amendment Four should be considered unconstitutional on the basis of its vague, misleading, and deceptive wording which denied the Petitioners and all other voters the right to cast an effective ballot when such right is guaranteed under the 15th Amendment, U. S. Constitution and protected by 42 U.S.C. §1971.

The wording of Amendment Four failed to inform the North Carolina voters including the Petitioners that the existing limitation on property tax rate which had protected them in the past would be completely removed. The wording on the ballot failed to mention taxes at all. The passage of this Amendment Four, resulted in county tax collectors,

including Franklin County, establishing the tax rates for levy of ad valorem taxes at an excessive, unprecedented level far higher than would have been allowed prior to the 1970 election. The rate was 20 cents (20¢) per one hundred dollars of valuation in 1969. It is now at 97 cents (97¢) per one hundred dollars of valuation, a 375% increase.

A close investigation of the wording shows the vagueness of the proposed Amendment Four printed on the 1970 ballot in an intentionally misleading sentence, to wit:

> **"FOR or AGAINST constitutional amendment revising those portions of the present or proposed State Constitution concerning State and local finance."** (App. A)

The ballot description makes no mention of taxes nor states that the cap on property tax rate will be completely removed. In other words, the intent of this amendment was, in fact, to lift all restrictions that the North Carolina constitution had heretofore placed upon the property tax rate and to deny the voters any voice in the matter of approving the tax rate. Instead, all such authority is given to the General Assembly which, in turn, delegated to the counties the right to set property tax rate. All of these changes were accomplished under the guise of a vaguely worded and intentionally misleading sentence describing proposed Amendment Four, "revising portions of the present and proposed State Constitution concerning State and local finance." App. A.

Others besides the Petitioners objected to the flawed 1970 North Carolina ballot on the premise that any law arising out of such deceptive balloting does not met the requirements for becoming law and should be voided. In the case, Green v. Eure, six of the seven proposed amendments on the 1970 North Carolina ballot, including Amendment Four, were challenged on the basis that the wording was vague and uncertain for such extensive constitutional change:

> "That the constitutional changes intended to be effected by Chapter 1200, and required to be, and in fact, described on the ballot as "revising those portions of the present or State Constitution concerning State and local finance" proposes an amendment upon a proposed amendment, subject to further amendment by the change intended by Chapter 872, and is void for the vagueness and uncertainty of statement of extensive and complex changes of a radical nature, and is violative of the provisions of Article XIII of the Constitution of North Carolina". Green v. Eure Wake Co., NC Case 70CVS7081; Case 7510SC347.

Furthermore, the South Carolina Supreme Court declared an election invalid on a proposed amendment to the state constitutions in Tipton v. Smith 93 S.E. 2d 640:

> "The ballot on which was printed the deceptive resolution did not adequately propound the question and therefore the election was invalid."

Tipton v. Smith (93 S.E. 2d 640) further affirmed all that is needed for evidence to demonstrate deception, is the ballot itself. The issue to be voted upon must be printed on the ballot.

> "Where the question of proposed amendment of constitution is manifestly erroneous and misleading, there is not room for presumption, nor is evidence, other than the ballot itself, needed to demonstrate the deception."

Had the information been posted on the walls of the voting place, the requirements for becoming law would still not have been satisfied because the specifics were blatantly left off the 1970 ballot:

> "Posting the full text of the proposing resolution of an amendment to the constitution in each voting place did not cure the unfair and deceptive phrasing of the proposing resolution as it was submitted on the ballot." Tipton v. Smith S.E. 2d 641; Code 1952, &23-321.

The ballot must be presented in plain understandable wording that clearly explains the exact and specific idea that is being voted upon.

> "It must be complete enough to convey an intelligible idea of the scope and import of the proposed law. It ought not to be clouded by undue detail, nor yet so abbreviated as but to be readily comprehensible. It ought to be free from any misleading tendency, whether of amplification, or omission, or of fallacy. It must contain no partisan coloring. It must in every particular be fair to the voter to the end that intelligent and enlightened judgement may be

exercised by the ordinary person in deciding how to mark the ballot." In re Opinion of Justices, 271 Mass. 582, 171 N.E. 294, 297, 69 A.L.R. 388.

The wording of proposed Amendment Four on the 1970 ballot does not come close to meeting the above requirements for a text. Indeed, there is no text, nor even a summary of how the writers were evasively planning to use this purposefully misleading sentence that leaves out any mention of the most oppressive constitutional change in two hundred years, the elimination of a specific limit on the property tax rate.

Using the above court rulings as a reference, Amendment Four's intentional deception is exposed:

- Amendment Four failed to "adequately propound the question."

- Amendment Four failed "to convey an intelligible idea of the scope and import of the proposed law."

- Amendment Four failed "to be free of any misleading tendency whether of amplification, omission or fallacy."

- Amendment Four failed to contain wording that was "in every particular" fair to the voter "to the end that intelligent and enlightened judgement may be exercised by the ordinary person in deciding how to mark the ballot."

Whether the violation of presenting a vague, misleading and deceptive ballot was intentional or negligent is best determined by the history of ballots relating to the cap on property tax rate. Petitioners contend that the 1970 ballot is intentionally deceptive.

In 1948, the legislature presented North Carolina voters with a very clear proposed amendment relating to the cap on the property tax rate, Amendment Three, App. B.

1948 Ballot: Proposed Amendment No. 3

" ☐ **FOR** amendment increasing the amount of total State and county tax which may be levied tax from fifteen (15¢) cents on the one hundred dollars ($100.00) valuation to twenty five (25¢) cents on the one hundred dollars ($100.00) valuation."

" ☐ **AGAINST** amendment increasing the amount of total State and county tax which may be levied on property, by changing the limitation on said tax from fifteen (15¢) cents on the one hundred dollars ($100.00) valuation to twenty five (25¢) cents on the one hundred dollars ($100.00) valuation."

North Carolina voters defeated the above proposed State Constitutional Amendment which was specific with the wording of intent to raise the limit on property taxes.

On the 1952 ballot, the General Assembly chose to employ language implying that a limitation was being placed on property taxes but did not advise voters of the current limitation. The voter was presented with the choice of voting either FOR or AGAINST a Proposed Amendment Three on the 1952 ballot, App. C.

1952 Ballot: Proposed Amendment No. 3

" ☐ **FOR** limiting the amount of total State and county tax which may be levied on property to twenty cents (20¢) on the one hundred dollars ($100.00) valuation."

" ☐ **AGAINST** limiting the amount of total State and county tax which may be levied on property to twenty cents (20¢) on the one hundred dollars ($100.00) valuation."

North Carolina voters passed the above proposed Amendment No. 3 in 1952 which was specific with the wording of intent to put limits on the total State and local property tax rate to twenty cents (20¢) per one hundred dollars ($100.00) of property valuation. That limit became a part the North Carolina State Constitution,1953, App. D.

The lesson which the General Assembly apparently learned from the voters' response in these two previous ballots appears to have influenced the decision to intentionally present voters with a vague and misleading ballot (App. A) in 1970, which inadequately described the changes intended to be made in Article V Sec. 6 of the 1969 North Carolina State Constitution. Apparently, in 1970, the legislature, not wishing to risk rejection of the proposed Amendment Four by adequately informing the voters of the true substance of the proposed amendment hoped that the voters unquestionally would approve the amendment which would strip the voters of North Carolina of their constitutional power to approve the tax rate on real property. (N. C. State Constitution, 1969, 1977, App. D)

1970 Ballot: Proposed Amendment No. 4

" ☐ **FOR** constitutional amendment revising those portions of the present or proposed State Constitution concerning State and local finance."

" ☐ **AGAINST** constitutional amendment revising those portions of the present or proposed State Constitution concerning State and local finance."

The Petitioners respectfully requests the Supreme Court to examine the three ballots described herein. By comparing the two previous proposals presented on the 1948 ballot and 1952 ballot, the omission of certain key essential words on the 1970 ballot can be readily viewed. The abridged wording omits essential facts necessary for a voter to make an informed and effective vote and thereby deprived the voters of executing a vote with all action necessary to make the vote effective.

Not only was the wording on the ballot flawed, the describing sentence was so abbreviated and misleading as to abridge all opportunity for the Petitioners and all other voters in North Carolina to know exactly the result of a "FOR" vote.

Excerpts from witnesses in Case No. 88-CVD-377 indicated strong supportive testimony from two former North Carolina State Legislators, concurring with the Burdicks that the 1970 ballot was inadequate, vague, and improper, and that any changes to be made in a constitution should be clearly stated on the ballot.

Mr. Edward F. Yarborough, who had practiced law for over 50 years in Franklin County, served as County Attorney and was a former member of the North Carolina General Assembly, was asked:

> Question: (from Attorney Fillippelli): "Mr. Yarborough, let me ask you one final question if I might. Do you think that when State puts a ballot before someone who can either approve or not approve it, that ballot should be specific enough so that they know what they're voting on?"
>
> Answer: I think it certainly should be, let them know what they're voting for because that's elementary in legislative work."
>
> Question: That's the very cornerstone of a democracy, is it not?"
>
> Answer: "Yes. They should know it. I remember when they increased it from 15 cents to 20 cents. As I recall it was on it. People knew what they were doing. I think it certainly should state what was on it. People know what they're voting for or against."

Mr. William D. Harrison, a former school principal and college dean, and who had also served in the North Carolina General Assembly, was asked:

> Question: (from Attorney Fillippelli) "I hand you what's been marked as Defendant's Exhibit #2. First of all did you vote in the election in 1970?"
>
> Answer: (from William D. Harrison). "Yes, I did."

Question: "Do you recall that ballot in 1970?"

Answer: "Yes, I sure do."

Question: "Let me call your attention to proposed Amendment # 4 on that ballot. Would you read it to yourself silently please?"

Answer: "Yes."

Question: "Do you recall reading that in 1970, seeing that amendment?"

Answer: "Yes, I do."

Question: "Did you know what it meant or what it proposed to do?"

Answer: "I sure didn't."

Question: "You did not?"

Answer: "No."

Question: "Do you recall hearing or seeing anything which would inform you as to what that proposed amendment meant?"

Answer; "Absolutely not."

Question: "Did you know that gave the General Assembly the authority to authorize counties to levy taxes at greater than the 20 cents per one hundred dollar valuation that was then in effect?"

Answer: "It gives them unlimited authority."

Question: "Did you know that then?"

Answer: "No, I didn't know it then."

Question: " Do you know of your own knowledge what the effect of that amendment has been based on your research and your time in the General Assembly?"

Answer: "Well, there's no doubt about it. This caused property taxes to increase tremendously."

It is respectfully requested that the U. S. Supreme Court consider the question: If expert witnesses and former lawmakers did not know the meaning of proposed Amendment Four on the 1970 North Carolina's official ballot, how could the qualified voters confronted with that vague, misleading, and deceitful ballot be expected to understand for what they were voting and cast a meaningful, effective vote?

Petitioners sought justice in the North Carolina judicial System a decade ago on the basis that Amendment Four on the 1970 election was intentionally flawed and the laws resulting from the passage of this amendment are unconstitutional, 88-CVD-377. Federal constitutional and civil rights violations were not the issue. In the first trial, the judge found Amendment Four constitutional but denied attorney fees which established credibility to the Petitioners' claim that voters had never knowingly voted to remove the existing cap on property taxes.

The North Carolina Court of Appeals, Case No. 909DC1189, affirmed the lower court decision on the basis that:

> "the defendants' delay in claiming the unconstitutionality of the 1970 ballot is both unreasonable and materially prejudicial to the plaintiff. Defendants defense is therefore barred by laches."

The issue of latches was not raised in the lower court. It was not until the county government became emboldened to raise tax rates in the early 1980's that the Petitioners became aware of the ramifications of the 1970 ballot and then protested the same.

On appeal, the State Supreme Court did not accept the case, No. 374A91, for consideration.

As set forth in Article XIII, Section 2 North Carolina State Constitution, 1969, "the power to amend the constitution is reserved to the people." (App. D) Even though the votes cast "FOR" Amendment Four in 1970 were in a plurality, the Petitioners allege that the Amendment was never approved by the voters of North Carolina in the context that the voters did not know what issues they were voting upon because of the poorly worded and deceitful ballot.

The Petitioners maintain that procedural due process has been denied, Haag v. Cuyahoga Co. Ohio; 42 U.S.C. §1983. The State of North Carolina could have remedied the situation of a flawed 1970 ballot and the improperly validated laws that followed by holding another vote on Amendment Four this time with a clearly worded ballot explaining specific intent---but the State has not chosen to do so.

There is apparently, among those close to State and local government officials, a tendency to be skeptical of the claim that the 1970 North Carolina ballot was extremely flawed and unconstitutional, despite irrefutable evidence available to show voters never knowingly cast a vote to eliminate the Constitutional cap on property tax rate.

Justice, therefore, must be sought in the federal judicial system where there is authority under the supremacy of jurisdiction to void politically inspired and oppressive laws that violate individual rights protected by the Federal Constitution and Civil Rights Law. The Petitioners believe that a remand to the state court would be futile in the attempt to find justice when the issues raised in this case are within the realm of federal jurisdiction.

III. A writ of certiorari is necessary to set standards for wording of ballots requiring truthful and specific statements so as to protect the constitutional and civil rights of the Petitioner and all voters and guarantee that an informed and effective vote may not be used for any purpose other than that which the voters intend.

The Petitioners believe that the federal court system has jurisdiction of this case due to issues involving the violation of their constitutional and civil rights by the county acting under color of state law.

The United States Supreme Court has the power to nullify a State Law that is in conflict with the United States Constitution under the principle of the "Doctrine of Nullification." In a recently televised program, "Questions and Answers with Students," two Supreme Court Justices explained the

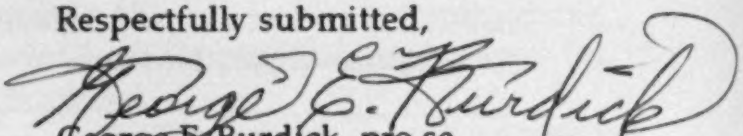
court's role and the principle of Judicial Review. Justice Stephen Breyer enumerated on the power of the Supreme court founded upon Justice Holmes' opinion that the court has the power to say when an act passed by a state is contrary to the Federal Constitution and to declare the state law void under the "Doctrine of Nullification." Justice Sandra Day O'Connor went on to explain the Supremacy Clause in the United States Constitution which declares the laws of the United States are the supreme laws of the land. When a state law is inconsistent with the U. S. Constitution then the federal constitution has the last word.

The Petitioners respectfully request the Supreme Court of the United States to review this case and reverse the decision of the 4th Circuit Federal Appeals Court and the Federal District Court Eastern District of North Carolina and hold as matter of law that the 1970 North Carolina Ballot Amendment Four is unconstitutional and that through its use the Petitioners has been deprived of civil and constitutional rights under color of an improperly validated state law; AND that the Petitioners has been discriminated against by the foreclosure processes used by Franklin County violating their right to due process protected by the U. S. Constitution and the Civil Rights Code 42 U.S.C. §1971 and 42 U.S.C. §1983, OR

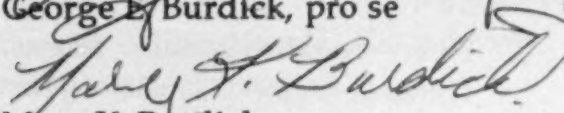
In the alternative, the Petitioners respectfully request the Supreme Court of the United States to order the 4th Circuit Federal District Court to take jurisdiction of this case on the basis that there are federal issues involved stemming from the use of laws derived from a ballot that intentionally denied Petitioner the right to vote effectively, AND discriminatory foreclosure practices by the County that deny due process.

We fervently hope this court nullifies Amendment Four on the 1970 North Carolina Ballot to validate the Petitioners' constitutional right to make an informed, effective vote and restores the limit of taxation to a cap of 20 cents per hundred dollars of valuation until such time as North Carolina voters in a properly conducted election with a clear, understandable ballot, choose to make changes; AND finds that Franklin County has violated the Petitioners' right to due process by its abusive, discriminatory procedures initiated to foreclose on real property.

Respectfully submitted,



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Tupelo Ranch
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Stokes, N. C. 27884
Telephone: (252) 795-3604
or (717) 865-9612
Petitioners representing themselves

APPENDIX A

Election November 8, 1970

OFFICIAL BALLOT ON CONSTITUTIONAL AMENDMENTS

INSTRUCTIONS TO VOTER

1. To vote FOR any amendment, make a cross mark in the square to the left of the word FOR.
2. To vote AGAINST any amendment, make a cross mark in the square to the left of the word AGAINST.
3. If you tear or deface or wrongly mark this ballot, return it and get another.

1.

☐ FOR revision and amendment of the Constitution of North Carolina.

☐ AGAINST revision and amendment of the Constitution of North Carolina.

2.

☐ FOR constitutional amendment to require General Assembly to reduce number of State Administrative Departments to 25 and to authorize Governor to reorganize Administrative Departments, subject to legislative approval.

☐ AGAINST constitutional amendment to require General Assembly to reduce number of State Administrative Departments to 25 and to authorize Governor to reorganize Administrative Departments, subject to legislative approval.

3.

☐ FOR constitutional amendment permitting three-fifths of the members of the General Assembly to convene extra sessions of the General Assembly.

APPENDIX A (continued)

☐ AGAINST constitutional amendment permitting three-fifths of the members of the General Assembly to convene extra sessions of the General Assembly.

4.

☐ FOR constitutional amendment revising those portions of the present or proposed State Constitution concerning State and local finance.

☐ AGAINST constitutional amendment revising those portions of the present or proposed State Constitution concerning State and local finance.

5.

☐ FOR constitutional amendment authorizing General Assembly to fix personal exemptions for income tax purposes

☐ AGAINST constitutional amendment authorizing General Assembly to fix personal exemptions for income tax purposes.

6.

☐ FOR constitutional amendment providing that after June 30, 1972, the escheats shall be used to aid North Carolina residents enrolled in any public institution of higher education in this State.

☐ AGAINST constitutional amendment providing that after June 30 1971, the escheats shall be used to aid North Carolina residents enrolled in any public institution of higher education in this State.

APPENDIX A (continued)

7.

☐ FOR constitutional amendment abolishing literacy requirement for voting,

☐ AGAINST constitutional amendment abolishing literacy requirement for voting.

State of North Carolina
General Election November 8, 1970
s/ Chairman State Board of Elections

Proposed Amendment Four above is the item discussed in this case because of the vague, misleading and deceptive wording .

APPENDIX B

Election November 3, 1948

OFFICIAL BALLOT ON CONSTITUTIONAL AMENDMENTS

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1. To vote FOR any amendment, make a cross mark is the square to the left of the word FOR
2. To vote AGAINST any amendment, make a cross mark is the square is the left of the word AGAINST
3. If you tear or deface or wrongly mark this ballot, return it to the registrar and get another.

1.

☐ FOR using salaries of Members of the General Assembly of twelve hundred dollars ($1,2000.00) and Presiding Officers fifteen hundred dollars ($1,500.00) and using salaries for Extra Sessions at two hundred and fifty dollars ($250.00) respectfully.

☐ AGAINST using salaries of Members of the General Assembly of twelve hundred dollars ($1200.00) and Presiding Officers fifteen hundred dollars ($1,500.00) and using salaries for Extra Sessions at two hundred and fifty dollars ($250.00) respectfully.

2.

☐ FOR amendment removing debt limitations upon the State, counties and municipalities necessary expenses.

☐ AGAINST amendment removing debt limitations upon the State, counties and municipalities necessary expenses.

APPENDIX B (continued)

3.

☐ FOR amendment increasing the amount of total State and county tax which may be levied on property, by changing the limitation on said tax from fifteen (15¢) cents on the one hundred dollars ($100.00) valuation to twenty-five (25¢) cents on the one hundred dollars ($100.00) valuation.

☐ AGAINST amendment increasing the amount of total State and county tax which may be levied on property, by changing the limitation on said tax from fifteen (15¢) cents on the one hundred dollars ($100.00) valuation to twenty-five (25¢) cents on the one hundred dollars ($100.00) valuation.

4.

☐ FOR determining results of special elections by majority vote.

☐ AGAINST determining results of special elections by majority vote.

Election, November 3, 1948.

S/ Chairman State Board of Elections

APPENDIX C

Election November 4, 1953

OFFICIAL BALLOT ON CONSTITUTIONAL AMENDMENTS

INSTRUCTIONS TO VOTERS

1. To vote FOR any amendment, make a cross mark in the square to the left of the word FOR.
2. To vote AGAINST any amendment, make a cross mark in the square to the left of the work AGAINST.
3. If you tear or deface or wrongly mark this ballot, return it to the registrar and get another.

1.

☐ FOR limiting the amount of total State and county tax which may be levied on property to twenty cents (20¢) on the one hundred dollars ($100.00) valuation.

☐ AGAINST limiting the amount of total State and county tax which may levied on property to twenty cents (20¢) on the one hundred dollars ($100.00) valuation.

2.

☐ FOR amendment to fill a vacancy occurring in the General Assembly by death, resignation or otherwise by immediate appointment of the Governor, upon the recommendation of the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.

APPENDIX C (continued)

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4. (continued)

☐ AGAINST amendment to fill a vacancy occurring in the General Assembly by death, resignation of otherwise by immediate appointment of the Governor, upon the recommendation of the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.

3.

☐ FOR amendment providing a uniform method for filling vacancies in certain State offices.

☐ AGAINST amendment providing a uniform method for filling vacancies in certain State offices.

Election November 4, 1953.

S/ Chairman State Board of Elections

APPENDIX D

NORTH CAROLINA STATE CONSTITUTIONS excerpts from

A comparison of the wording found in North Carolina Constitutions at different times shows the elimination of the limit on property tax rate following election of 1970.

NORTH CAROLINA STATE CONSTITUTIONS

NC State Constitution 1947:

ARTICLE V

Sec. 6 states, in part:

Taxes levied for counties. "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, ..."

NC State Constitution 1951:

ARTICLE V

Sec. 6 the same as in 1947, states, in part:

Taxes levied for counties. "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property,..."

NC State Constitution 1969:

ARTICLE V

Sec. 6 the same as in 1947 and 1951, states, in part:

Taxes levied for counties. "The total of the State and county tax on property shall not exceed twenty cents (20¢) on the one hundred dollars ($100.00) value of property, ..."

ARTICLE XIII

Sec. 2 states in part: "...the power to amend the constitution is reserved to the people."

APPENDIX D (continued)

NC State Constitution 1973:

ARTICLE V

Sec. 2 (4) states, in part:

Taxes levied for counties . "The total of the State and county tax on property shall not exceed twenty cents (20¢) on the one hundred ($100.00) value of property, ..."

NC State Constitution 1977:

ARTICLE V:

Sec. 2 (1) states, in part:

Power of taxation. "The power of taxation shall be exercised in a just and equitable manner, for public purposes only, ..."

Sec. 2 (4) states, in part:

Special tax areas. "Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those area..."

Sec. 2 (5) states, in part:

Purposes of property tax. "The General Assembly shall not authorize any county city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon."

There is no reference to any cap on property tax rate in the 1977 edition of the North Carolina State constitution.

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FRANKLIN COUNTY, North Carolina Body Politic — CIVIL ACTION

VERSUS — No. 5:97-CV-481-BR(3)

GEORGE E. BURDICK;MARY K. BURDICK

ORDER

This matter came before the court on plaintiff's motion to remand and for attorney's fees, and found that the court lacked subject matter jurisdiction and the Plaintiff was entitled, pursuant to 28 U.S.C. §1447(c), to recover from defendants its reasonable costs, expenses and attorney's fees.

THEREFORE, it is ORDERED that the action be REMANDED to the District Court Division of the General Court of Justice of Franklin County, North Carolina; and that plaintiff have and recover of defendant the sum of $1,750 (ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS) for its costs, expenses and attorney's fees. (6 October 1997)

by W. Earl Britt
UNITED STATES DISTRICT JUDGE
Dated October 6, 1997

Motion for Reconsideration
Stamped DENIED July 22, 1998
Motion to Amend Motion for Reconsideration
Stamped DENIED July 22. 1998

APPENDIX F

UNITED STATES COURT OF APPEALS
for the Fourth Circuit

No. 98-2246 CA-97-481-5-BR-3
No. 98-2247 CA-97-482-5-BR-3
No, 98-2248 CA-97-483-5-BR-3
No. 98-2249 CA-97-384-5-BR-3

FRANKLIN COUNTY, North Carolina Body Politic
Plaintiff-Appellee,

VERSUS

GEORGE E. BURDICK; MARY K. BURDICK,
Defendants -Appellants

and

BEN N. WILLIAMSON, III, Trustee: Farm Credit Bank of Columbia, Lienholder, JOHN TANTUM, Trustee: Nationscredit Financial Services Corporation of America, Lienholder
Defendants

Appeal from the United States District Court for the Eastern District of North Carolina at Raleigh
(CA-97-481-5-BR-3, CA-97-482-5-BR-3,
CA-97-483-5-BR-3, CA-97-484-5-BR-3)

Decided: November 4, 1998

Before WILKINS and HAMILTON, Circuit Judges, and BUTZNER, Senior Circuit Judge,

PER CURIAM:[1]

Dismissed by unpublished per curiam opinion.

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[1] Pursuant to Local Rule 36(c), unpublished opinions are not binding precedent in this circuit

APPENDIX F (continued)
UNITED STATES COURT OF APPEALS

PER CURIAM OPINION:

In these four consolidated appeals, George and Mary Burdick appeal district court orders denying their motions for reconsideration and motions to amend their motions for reconsideration of four underlying orders remanding the four cases against them back to state court. Because the district court in this case remanded the cases on grounds expressly provided for in 28 U.S.C. §1447 (d) (1994), and consequently orders denying motions for reconsideration of remand orders. We note that 28 U.S.C. §1447 (c) also authorizes the district court to require a party to pay just costs and actual expenses, including attorney's fees.

In light of the foregoing, we dismiss these four appeals for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and oral argument would not aid the decisional process.

DISMISSED

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-2246, No. 98-2247, No. 98-2248, No, 98-2249
Ca-97-481-5-BR-3

FRANKLIN COUNTY, a North Carolina Body Politic
Plaintiff- Appellee
v.

GEORGE E. BURDICK; MARY K. BURDICK
Defendants-Appellants
and
BEN N. WILLIAMSON, III, Trustee; FARM CREDIT BANK OF COLUMBIA, Lienholder
Defendant

On Petition for Rehearing and Rehearing En Banc

On the Appellants' petition for rehearing, the panel was of the opinion that it should be denied. No member of the Court or the panel requested a poll on the petition for rehearing en banc. IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.
FOR THE COURT,

/s/ Patricia S. Connor
Clerk

Date of Entry: December 28, 1998

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED December 28, 1998

No. 98-2246(L) Ca-97-481-5-BR-3
No. 98-2247(L) Ca-97-482-5-BR-3
No. 98-2248(L) Ca-97-483-5-BR-3
No. 98-2249(L) Ca-97-484-5-BR-3

FRANKLIN COUNTY, a North Carolina Body Politic
Plaintiff- Appellee

v.

GEORGE E. BURDICK; MARY K. BURDICK
Defendants-Appellants

ORDER

Appellee has filed a motion for award of damages and costs for these appeals.

IT IS ORDERED that the motion is denied.

FOR THE COURT - BY DIRECTION
/s/ Patricia S. Connor
CLERK

APPENDIX I

NORTH CAROLINA GENERAL STATUTES
(N.C.G.S.)
Excerpts From Chapter 105. Taxation

ARTICLE 11

§ 105-369. **Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of unpaid Taxes that are Liens on Real Property.- On the first Monday in February in each year,... each county tax collector shall report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property, and the governing body shall thereupon order the tax collector to advertise such tax liens.

(c) Time and Contents of Advertisement.- The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit.....Advertisements of tax liens shall be made during the period March 1 through June 30.

§ 105-374. **Foreclosure of tax lien by action in nature of action to foreclose a mortgage.**

(a) General Nature of Action. — The foreclosure action authorized by this section shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is situated and shall be an action in the nature of an action to foreclose a mortgage.

APPENDIX J

CONSTITUTION OF THE UNITED STATES

AMENDMENT IV

Searches and seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX J (continued)

AMENDMENT XV

§ 1. Right to vote not to be abridged

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.